

October 27, 2004

Via Electronic Comment Filing System (ECFS)

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Proposed Rulemaking
MB Docket No. 04-256

Dear Ms. Dortch:

Peak Media of Pennsylvania Licensee LLC ("Peak") and Palm Television, L.P. ("Palm") (Peak and Palm, together, the "Joint Commenters") hereby submit these Comments in response to the Commission's Notice of Proposed Rule Making (the "*Notice*") in MB Docket No. 04-256. In the *Notice*, the Commission asks whether its reevaluation of grandfathered pre-November 1996 television local marketing agreements ("LMAs") should commence in 2004 or be postponed until the quadrennial ownership review in 2006. The Joint Commenters urge the Commission to postpone the reevaluation until 2006 at the earliest due to the unsettled issues involving the Commission's new ownership rules and substantial questions about the economic viability of subject stations as stand-alone operations in smaller markets.

The Joint Commenters have a significant interest in the Commission's inquiry regarding grandfathered pre-November 1996 television LMAs. Peak provides programming to television station, WATM-TV, Channel 23, Altoona, Pennsylvania, licensed to Palm, pursuant to a grandfathered pre-November 1996 television LMA. Peak is the licensee of television station WWCP-TV, Channel 8, in Johnstown, Pennsylvania. Both stations are located in the Johnstown-Altoona, PA Designated Market Area which is ranked 97th in the country.

The Joint Commenters submit that the unresolved issues involving the Commission's new ownership rules should be settled before the Commission reevaluates grandfathered pre-November 1996 television LMAs because of the significant impact the new rules may have on the LMAs. Indeed, in larger markets in particular, the new rules may render the Commission's reevaluation of many grandfathered pre-November 1996 LMAs moot, given a large number may comply with the Commission's new local television ownership rules.

The Commission's broadcast ownership rules are in flux, however, and may remain so for quite some time. As the Commission is aware, in June 2004, the Third Circuit remanded much of the Commission's June 2003 decision back for further consideration, including portions of the revised local television ownership rules.¹ The new rules appear unlikely to take effect anytime soon, as the

¹ Specifically, the court upheld the "Top Four" restriction of the Commission's revised local television rules but it held the Commission did not properly justify the particular revised numerical

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Third Circuit's stay preventing the Commission from implementing the new rules will remain in force until after either the Supreme Court reverses the Third Circuit's decision or the Commission completes its court-ordered review and the Third Circuit approves the result. Indeed, it appears that the entire process may not be completed before 2006. Accordingly, given the interrelated nature of television LMAs and the Commission's ownership rules, the Commission should postpone its reevaluation of grandfathered pre-November 1996 television LMAs at least until 2006.

In addition, before beginning its reevaluation of grandfathered pre-November 1996 television LMAs, the Commission should be certain that the stations could remain economically viable as stand-alone operations. The Joint Commenters submit that there is substantial question whether that would occur in smaller markets. In such markets, the current economic conditions, competition, digital transition, and small advertiser base may make it especially difficult for joint broadcast operations to remain economically viable on their own. For example, how have poor economic conditions affected the status of competition and diversity in smaller markets? Also, has it been relatively more difficult for stations in smaller markets to finance the transition to DTV? Additional data is necessary for those and other questions to be answered. Broadcasters must be afforded sufficient time to gather such data so the Commission has a complete record to determine whether continuation of the LMA is in the public interest. The Commission therefore should not rush to reevaluate grandfathered pre-November 1996 television LMAs. Given the potentially devastating impact termination of grandfathered pre-November 1996 television LMAs may have on the economic viability of many stations in smaller markets, and, in turn, their service to the public, the public interest demands such a result.

Based on the foregoing, the Joint Commenters urge the Commission to postpone its reevaluation of grandfathered pre-November 1996 television LMAs until 2006 at the earliest.

Respectfully submitted,

By Frank Quitoni
Frank Quitoni
President of Peak Media of Pennsylvania
LLC and
General Manager of WWCP-TV

By Gregory Filandrinos
Gregory Filandrinos
President of GF, Inc., General Partner of
Palm Television, L.P.

limits. Consequently, the court remanded the numerical limits back to the Commission for further review and analysis.